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testator, then the devised estate vests in him absolutely; provided, however, that if the testator's intent clearly appears to be otherwise, that intention will be given effect. *Fowler* v. *Duhme,* 143 Ind. 248; *Lawlor* v. *Holohan,* 70 Conn. 87. Other authorities seem to lean the other way. *Britton* v. *Thornton,* 112 U. S. 526. It must be remembered, however, that in most cases there are controlling circumstances. It is submitted that the Minnesota court in the instant case applied the above proviso to the rule. The Indiana court did likewise in *Moore* v. *Gary,* 149 Ind. 51. The same rules apply equally to devises of realty as to bequests of personalty. *Dictum* in *Ferguson* v. *Thomason,* 87 Ky. 519, 524. At first glance the principal holding might seem not to harmonize with the classification laid down by Sir John Romilly in *Edwards* v. *Edwards,* 15 Beav. 357 (this case coming within his second class), but there is no conflict when his language is considered as a whole, for he supplements his views on this class by saying that "all these cases are of course liable to be varied by the force of particular expressions * * *, importing a different intention." Another reason for the result in the case at bar is that courts will have regard for the common desire of men to favor, with their bounty, their own kin. For an elaborate review of the authorities on this vexatious question see the note in 25 L. R. A. (N.S.) 1045.

WORKMEN'S COMPENSATION—"OUT OF AND IN THE COURSE OF EMPLOYMENT" —ACCIDENT ON WAY TO WORK.—An employee was run over by a train on his way to work. He was crossing a railroad track by a commonly used path at a point 20 feet from the entrance of his employer's place of business. *Held,* the accident arose out of and in the course of his employment. *Judson Mfg. Co. et. al.* v. *Industrial Accident Commission, et. al.,* (Cal., 1919) 184 Pac. 1.

An employee was the manager of a piano company which rented offices on the fourth floor of a building. He entered the building on Sunday, contrary to the rules of the lessors, but for the purpose of transacting his employers' business, and attempted to operate a passenger elevator to reach the fourth floor. He fell into the shaft, and was injured. *Held,* the accident arose out of the employment and was conpensable under the same statute as the *Judson case, supra. Starr Piano Co. et. al.* v. *Industrial Accident Commission, et al.,* (Cal., 1919) 184 Pac. 860.

An accident to a workman on the way to work is not ordinarily in the course of employment. HONNOLD, WORKMEN'S COMPENSATION, p. 358. *A fortiori,* it does not arise out of the employment. The fact that the accident did not occur on the premises of the employer may preclude recovery. *DeConstantin* v. *Pub. Serv. Com.,* 75 W. Va. 32. Even though the employee is on the premises of the employer on his way to work, recovery has been denied. *Walters* v. *Coal Co.,* 105 L. T. N. S. 119, (foot path across employer's field); *Byrket* v. *L. S. & M. S. R. R.,* 29 Ohio C. C. 614, (section hand walking on right of way). On the other hand, recovery has been allowed where the employer did not own or co ntrol the locus of the accident. *Sundine's Case,*

218 Mass. 1. The proximity of the place of accident to the place of employment seems to be the test approved in the two principal cases, as in *Sundine's Case, supra.* But see *Ocean Accident etc. Co.* v. *Ind. Acc. Comm.*, 173 Cal. 313; *Nelson Co.* v. *Commission,* 286 Ill. 632, (contra). For general discussion see 16 MICH. L. REV. 179, 462; also 15 Id. 606; 17 Id. 195, 280; 65 U. PA. L. REV. 80; 16 COL. L. REV. 267; 29 HARV. L. REV. 752.